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RECENT DEVELOPMENT

CECCONE V. CARROLL HOME SERVICES, LLC: A CONTRACT PROVISION SHORTENING THE PERIOD TO FILE AN ACTION MAY BE PERMISSIBLE UNLESS THERE IS A STATUTE TO THE CONTRARY, CERTAIN DEFENSES ARE ESTABLISHED, OR THE PROVISION IS UNREASONABLE.

By: Molly Miller

The Court of Appeals of Maryland held that a contractual provision shortening the statutory time limit for filing suit is enforceable as long as there is not a statute to the contrary, the provision is not the result of fraud, duress, or misrepresentation, and the provision is reasonable, under the circumstances. *Ceccone v. Carroll Home Services, LLC*, 454 Md. 680, 698, 165 A.3d 475, 485 (2017). The court further held that the trial court erred in finding the contract provision enforceable because it did not consider whether defenses such as fraud, duress, or misrepresentation applied. *Id.*

Richard and Daphne Ceccone (“Ceccones”) entered into a maintenance contract with Carroll Home Services, LLC (“CHS”) for their oil-fueled furnace. Section 10 of the agreement established that any legal action regarding the contract must be brought within one year, or the claim will be barred as a matter of law. However, Section 9 permitted CHS to delay in enforcing any of their rights, effectively creating a one-sided shortened statute of limitations.

In April of 2014, the Ceccones’ home was damaged due to an incident with their furnace. They consulted with an engineer, an insurance adjuster, and another furnace company, all of whom found CHS at fault for the incident. The Ceccones attempted to negotiate for damages in 2015, but ultimately the parties failed to reach a resolution.

On December 24, 2015, the Ceccones filed suit against CHS in the District Court for Anne Arundel County, claiming breach of contract and fraud. On January 19, 2016 CHS responded with an intent to defend. The district court dismissed the case based on the shortened limitations clause in the contract since the action was filed more than a year after the incident. The Ceccones appealed to the Circuit Court for Anne Arundel County. The circuit court also found in favor of CHS based on the shortened limitations clause. The Ceccones appealed to the Court of Special Appeals. The case was then transferred to the Court of Appeals of Maryland, who granted *certiorari*, since it involved an issue of law that was best resolved by the higher court, pursuant to Maryland Rule 8-132.

The Court of Appeals of Maryland began its analysis by examining the rationale behind statutes of limitations. The court noted that these statutes are designed to balance the interests of plaintiffs, defendants, and the public.

Ceccone, 454 Md. at 691, 165 A.3d at 481. The limitation represents a policy decision setting a reasonable time for the plaintiff to investigate and file suit, while protecting the defendant from a claim that has been unreasonably delayed. *Id.* (citing *Pennwalt Corp. v. Nasios*, 314 Md. 433, 437-38, 550 A.2d 1155 (1988); *Pierce v. Johns-Manville Sales Corp.*, 296 Md. 656, 665, 464 A.2d 1020 (1983)). The three-year statute of limitations governing the Ceccones' claim illustrates a policy decision determining three years as an adequate amount of time for a reasonably diligent plaintiff to bring suit. *Ceccone*, 454 Md. at 691, 165 A.3d at 481 (citing Md. Code Ann., Cts. & Jud. Proc. § 5-101).

The court continued by stating that statutes of limitations are not an absolute limit. *Ceccone*, 454 Md. at 692, 165 A.3d at 481-82. Limitation periods are frequently lengthened by waiving or tolling, and in some cases shortened through consent. *Id.* The court identified approaches taken by other states, including enacting statutes to prohibit these types of provisions or judicially prohibiting these provisions in the name of public policy. *Id.* at 692-93, 165 A.3d at 482. Some states permit these provisions absent defenses regarding the contract's formation. *Id.* Furthermore, certain jurisdictions will simply permit the provision after evaluating its reasonableness. *Id.*

Next, the court explained how Maryland law has combined these approaches. *Ceccone*, 454 Md. at 693, 165 A.3d at 482. Specifically, for insurance and surety contracts, the Maryland legislature has expressly prohibited shortening the statute of limitations. *Id.* at 693, 165 A.3d at 482 (citing Md. Code Ann., Ins. § 12-104 (West); *St. Paul Travelers v. Millstone*, 412 Md. 424, 987 A.2d 116 (2010)). Overall, however, Maryland follows a three-part test to determine if the provision is permissible. *Ceccone*, at 693-94, 165 A.3d at 482-833 (citing *College of Notre Dame of Maryland, Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 174, 752 A.2d 265 (2000)). Under this test the provision will be found permissible if there is no statute to the contrary, the provision is reasonable, and the limitation is not subject to defenses of fraud, duress, or misrepresentation. *Id.*

In analyzing the first element, the court found no Maryland statute barring a provision that shortened the period to file an action regarding a home services maintenance agreement. *Ceccone*, 454 Md. at 696, 165 A.3d at 484 (citing *Morabito*, 132 Md. App. 158, 752 A.2d 265). The court then addressed defenses to contract formation and stated that the Ceccones' defenses of alleged misrepresentation and fraud were not evaluated by the circuit court. *Ceccone*, 454 Md. at 696, 165 A.3d at 484. The circuit court initially stated that the Ceccones were bound by the agreement regardless of the circumstances, which was in opposition to the judicial standard requiring consideration of certain defenses. *Id.*

The court next addressed the reasonableness of the provision. Reasonableness is measured by reviewing factors including the subject matter of the contract, the difference in length between the statutory limitation and contractually established limitation, the bargaining power of

the parties, and whether the provision is one-sided. *Ceccone*, 454 Md. at 694-95, 165 A.3d at 483 (citing *Morabito*, 132 Md. App. 158, 752 A.2d 265). When the Ceccones raised the issue of reasonableness, the circuit court refused to consider the issue since it had seen limitation periods in similar agreements. *Ceccone*, 454 Md. at 696-97, 165 A.3d at 484.

The Court of Appeals of Maryland ultimately remanded the case, with specific instructions for the circuit court to consider the evidence of misrepresentation and fraud, and to determine whether this evidence undermined the validity of the shortened limitations period. *Ceccone*, 454 Md. at 697, 165 A.3d at 485. Further, they instructed the circuit court to determine if the shortened period was reasonable. *Id.* In making this determination the court must consider the totality of the circumstances and apply the following factors: the length of the shortened limitations period, its relation to the statutorily established limitations period, the bargaining power of the parties, the subject matter of the agreement, whether the provision is one-sided, and other facets of the limitation provision. *Id.* at 697-98, 165 A.3d at 485.

The Court of Appeals of Maryland has for the first time adopted this three-part test, previously utilized by the court of special appeals. Its holding requires courts to apply the correct judicially-established test for limitation provisions in contracts of this nature. Practitioners that utilize limitation-shortening provisions in their contracts will be forced to comply with this new test. They must also ensure the provision is reasonable, utilizing the factors explained by the court in the instant case. This will likely adjust how attorneys write contracts, in order to ensure compliance with the court's holding. Further, this decision may provide a defense for litigants bound by shortened limitation periods in contractual clauses. They will now be able to raise the defense of fraud, misrepresentation, or duress when attempting to dismiss these provisions.